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In pro se

**ORIGINAL
FILED**
MAY 5 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Jane Doe

Plaintiff,

vs.

CITY OF SAN MATEO, et al.,

Defendants.

Case No. C 07-05596 SI

**NOTICE OF MOTION AND MOTION BY
PLAINTIFF JANE DOE TO AMEND FIRST
AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on Friday, June 13, 2008, at 9 a.m., or soon thereafter as the matter may be heard before the Honorable District Judge Susan Illston in Courtroom No. 10, 19th floor of the United States District Court Federal Building, located at 450 Golden Gate Avenue, San Francisco, CA. Plaintiff, Jane Doe, will and hereby does move this court to allow her to amend her first amended complaint under Rule 15 of the Federal Rules of Civil Procedure (The proposed second amended complaint is attached hereto as EXHIBIT "A").

Plaintiff brings this motion for leave to amend the amended complaint in the following manner:

1. Add additional theories of liability against defendants under Federal Civil Rights claim 42 U.S.C. sec 1983, 1985, 1985 (3) and 1988 based on facts and liability theories learned

1 through the discovery of discoverable evidence. Jurisdiction is founded upon 28 U.S.C. sec 1331
2 and 1341(3) and (4) and 1367

3 2. Add additional theories of liability against new defendants and/or "Doe"
4 defendants, based on facts and liability theories learned through new developments and related
5 actions.

6 All proposed actions in the second amended complaint (Exhibit "A" hereto) are based on
7 the same general facts and injuries sustained by the plaintiff and arising out of the incident on
8 November 5, 2005.

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11 Dated: May 2, 2008

Respectfully Submitted,

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15 By: Jane Doe, plaintiff in pro se
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 **I. PROCEDURAL BACKGROUND**

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5 Plaintiff filed her original un-redacted complaint on November 3, 2008. A first amended
6 complaint was filed by the plaintiff under the fictitious name of Jane Doe on November 5, 2008.
7 Plaintiff served the complaint upon the defendants on April 24, 2008.

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9 **II. DISCUSSION**

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11 **A. Pleading amendments are permitted liberally at any time
12 prior or even subsequent to the commencement of trial
so that cases may be determined on their merits.**

13 The court should freely give leave to amend when justice so requires. (Federal Rule of
14 Civil Proc., 15 (2)) Amendment is permitted at any time prior and even subsequent to the
15 commencement of trial (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564).

16 Further, it has long been the law in this state that the power of the courts to allow
17 amendment of pleadings is to be liberally exercised so that cases may be decided on their merits.
18 (See: *Desny v. Wilder* (1956) 46 Cal.2d 715, 751; *Klopstock v. Superior Court* (1941) 17 Cal.2d
19 13, 19-20; *IMO Development Corp. v. Dow Corning Co.* (1982) 135 Cal.App.3d 451, 461; *Malie*
20 *v. Hyatt* (1998) 61 Cal.App.4th 581, 596.) As such, if a motion to amend a pleading is timely
21 made, and granting the motion will not prejudice the other party, it is error to refuse permission to
22 amend, and, where the refusal also results in a party's being deprived of the right to assert a
23 meritorious claim, denial is also an abuse of discretion. (See: *Redevelopment Agency v. Herrold*
24 (1978) 86 Cal.App.3d 1024, 1031.)

25
26 Under the liberal policy of permitting amendments to pleadings, it has also been well
27 established that a pleading may be amended to state an additional cause of action, change in
28 theory of liability, add parties, or change relief.

1 The California Supreme Court in *Wennerholm v. Stanford University School of Medicine*
 2 (1942) 20 Cal.2d 713, set forth the "modern" rule that amendment to complaints will be allowed
 3 to state a new cause of action "so long as recovery is sought in each complaint upon the same
 4 general set of facts." (*Id.*, at p. 718 [emphasis added]; and see: *Austin v. Massachusetts Bonding*
 5 *& Ins. Co.* (1961) 56 Cal.2d 596, 600.) Thus, an amendment adding a new legal theory or cause
 6 of action will be permitted where liability is based on the same "operative facts," or "same
 7 injury," or "same accident." (*Dudley v. Department of Transp.* (2001) 90 Cal.App.4th 255, 265;
 8 *Goldman v. Wilsely Foods, Inc.* (1989) 216 Cal.App.3d 1085, 1094-1095.) The "operative facts"
 9 are those creating a right to recovery. (*Id.*, at see: Weil & Brown, Cal. Practice Guide (TRG
 10 2002) Civ. Proc. Before Trial, § 6:718.)

11 Similarly, additional "Doe" defendants and theories of liability against "Doe" defendants
 12 may be added based on the same "general set of facts." (*Austin v. Massachusetts Bonding & Ins.*
 13 *Co.* (1961) 56 Cal.2d 596, 600; and *Smeltzley v. Nicholson Mfg. Co.* (1977) 18 Cal.2d 932, 936.)
 14 Such an amendment will be permitted where: (1) the plaintiff was ignorant of the defendant's
 15 true name; (2) the defendant was unknown to the plaintiff; (3) the plaintiff was ignorant of facts
 16 creating liability; or (4) there is a new development in the law creating liability. (See: Weil &
 17 Brown, *supra*, §§ 6:752-6:761.)

18 Thus, even though a plaintiff may be aware of the identity of an individual involved in a
 19 given accident or occurrence, that individual may be added as a "Doe" defendant where facts are
 20 later discovered indicating that the individual may be liable in the action. (See, e.g., *Mishalow v.*
 21 *Horwald* (1964) 231 Cal.App.2d 517, and *General Motors Corp. v. Superior Court* (1996) 48
 22 Cal.App.4th 580, 597.)

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B. Plaintiff should be permitted to amend her complaint to add Defendants, Doe defendants, and causes of action.

In this case, plaintiff moves for leave to amend her complaint to include defendants related to and/ or arising out of the incident dated November 5, 2005.

Thus, plaintiff also moves to add causes of action against these new and current defendants based on facts and new developments. These causes of action include: (1) Federal Civil Rights claim 42 USC section 1983; Failure to Investigate (2) Federal Civil Rights claim 42 USC section 1983; Interference with access to the courts (3) Abuse of Process. *See* Proposed Second Amended Complaint, Exhibit "A". These causes of action are based on the same *general* set of facts and injuries sustained by the plaintiff and arising out of the incident on November 5, 2005.

There is no prejudice to the above-entitled defendants if plaintiff is granted leave to amend to add causes of action and defendants, since defendants are already a party in this proceeding. The initial case management conference has not been completed, discovery has not begun, and a trial date has not been set. Finally, "prejudice" under the law does not include the mere act of being included as a party. The prejudice recognized by the law is the prejudice to the plaintiffs if they cannot include as a party all of the potentially liable entities and individuals. Obviously, that is why the law provides for "Doe" pleading. This is a circumstance where it should be allowed.

III. CONCLUSION

The requirements for amending the complaint include applicable legal theories of liability, correct any mistakes in the pleading, and to include new defendants are satisfied in this matter.

Plaintiff respectfully requests this court to grant the present motion and permit filing of the proposed second amended complaint.

1 Dated: May 1, 2008

Respectfully Submitted,

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By: Jane Doe, plaintiff in pro se

EXHIBIT “A”

1 Jane Doe
1700 N Point #107
San Francisco, California 94123
2 Telephone: (415) 875-9571

3 In pro se

4 **UNITED STATES DISTRICT COURT**
5 **NORTHERN DISTRICT OF CALIFORNIA**
6

7 **Jane Doe**

8 **Plaintiff,**

9 **vs.**

10 **CITY OF SAN MATEO, et al.,**

11 **Defendants.**
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Case No. C 07-05596 SI

**[PROPOSED ORDER] AMENDING THE
FIRST AMENDED COMPLAINT**

15 After full hearing and having considered the moving and opposing papers, evidence and
16 exhibits, and good cause appearing therefore, IT IS HERBY ORDERED THAT:

17 The Plaintiff's Motion to amend the first amended complaint is granted.
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20 Dated: _____

21 _____
22 Hon. Susan Illston, United States District Judge
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Jane Doe
1700 N Point #107
San Francisco, California 94123
Telephone: (415) 875-9571
In pro se

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JANE DOE

Plaintiff,

vs.

**CITY OF SAN MATEO; SAN MATEO POLICE
DEPARTMENT; SAN MATEO POLICE CHIEF
SUSAN E. MANHEIMER, in her individual and
official capacity; OFFICER SHANDON
MURPHY in his individual and official capacity;
OFFICER JOSEPH YANSUKA in his individual
and official capacity SGT. PERUCCI in his
individual and official capacity; DETECTIVE
TONYA NUE in her individual and official
capacity; Lt. ALAN PARISIAN in his individual
and official capacity; SAN MATEO POLICE
OFFICERS Does 1-100; COUNYTY OF SAN
MATEO; SAN MATEO COUNTY SHERIFF'S
OFFICE; its former SHERIFF DON HORSLEY, in
his individual and former official capacity; SAN
MATEO COUNTY DEPUTY SUZANNE BLICK
in her individual and official capacity; Lt.
VICTORIA O'BRIEN in her individual and
official capacity; SGT. GIL RODRIGUEZ in his
individual and official capacity, KATHERYN
ALBERTIE in her individual capacity; SAN
MATEO COUNTY SHERIFF'S DEPUTIES Does
1-100; JAMES RAINEY MASON, in his
individual capacity; CITY OF SAN JOSE, SAN
JOSE POLICE DEPARTMENT, its POLICE
CHIEF ROBERT DAVIS in his individual and
official capacity; CITY OF BURLINGAME,
BURLINGAME POLICE DEPARTMENT, its
POLICE CHIEF JACK VAN ETEN, OFFICER
KEVIN KASHIWAHARA in his individual
capacity, OFFICER STEVE VEGA in his
individual and official capacity, DOES 1 - 200,
INCLUSIVE, et al.,**

Defendants.

Case No. C 07-05596SI

**[PROPOSED]
SECOND AMENDED COMPLAINT**

42 U.S.C. § 1983, § 1985, and § 1985 (3)

Complaint For Damages

DEMAND FOR JURY TRIAL

PLAINTIFF ALLEGES:**INTRODUCTION**

1. This is an action for declaratory and injunctive relief, damages, and punitive damages against THE CITY OF SAN MATEO, SAN MATEO POLICE DEPARTMENT, its POLICE CHIEF, SUSAN E. MANHEIMER, OFFICER SHANDON MURPHY in his individual and official capacity, OFFICER JOSEPH YANSUKA in his individual and official capacity, SGT PERUCCI in his individual and official capacity DETECTIVE TONYA NUE in her individual and official capacity, Lt. ALAN PARISIAN in his individual and official capacity SAN MATEO POLICE OFFICERS Does 1-100, THE COUNTY OF SAN MATEO, SAN MATEO COUNTY SHERIFF'S OFFICE, its former SHERIFF DON HORSLEY in his individual and former official capacity, SAN MATEO COUNTY SHERIFF DEPUTY SUZANNE BLICK in her official and individual capacity, Lt. VICTORIA O'BRIEN in her individual and official capacity, SGT. GIL RODRIGUEZ in his individual and official capacity, KATHERYN ALBERTIE in her individual capacity, SAN MATEO COUNTY SHERIFF'S DEPUTIES Does 1-100, JAMES RAINEY MASON in his individual capacity, CITY OF SAN JOSE, SAN JOSE POLICE DEPARTMENT, CITY OF BURLINGAME, BURLINGAME POLICE DEPARTMENT, its POLICE CHIEF JACK NAN ET TEN in his individual and official capacity, OFFICER KEVIN KASHIWAHARA in his individual capacity, OFFICER STEVE VEGA in his individual and official capacity, DOES 1 THROUGH 200, INCLUSIVE, et al., and sued herin by their fictitious names for violations of the Plaintiff's constitutional rights resulting from application of the CITY OF SAN MATEO, SAN MATEO POLICE DEPARTMENT, THE COUNTY OF SAN MATEO, SAN MATEO COUNTY SHERIFF'S OFFICE, THE CITY OF SAN JOSE, THE SAN

1 JOSE POLICE DEPARTMENT, THE CITY OF BURLINGAME, and the BURLINGAME
 2 POLICE DEPARTMENT'S policies, practices, and customs concerning the failure to train,
 3 failure to investigate, failure to report, failure to supervise, negligence, abuse, discrimination,
 4 conspiracy to discriminate, denial of equal protection, denial of medical attention, and the misuse
 5 of strip searches in San Mateo County Jail.

6
 7 2. JURISDICTION: This action is brought pursuant to 42 U.S.C. sec 1983, 1985,
 8 1985 (3) and 1988, and the First, Fourth, Eighth, and Fourteenth Amendments to the United
 9 States Constitution. Jurisdiction is founded upon 28 U.S.C. sec 1331 and 1341(3) and (4) and
 10 1367 and the aforementioned statutory and constitutional provisions.

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 12 3. The Court has supplemental jurisdiction over plaintiff's state claims under 28
 13 U.S.C. sec 1367 (a).

14 4. The amount in controversy exceeds \$100, 000, excluding interest and costs.

15 5. VENUE: Venue is proper here because all actions occurred in San Mate County,
 16 California in this court's jurisdiction.

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 18 6. INTRADISTRICT ASSIGNMENT: This lawsuit should be assigned to the San
 19 Francisco Division of this court because a substantial part of the event or omissions which gave
 20 rise to this action occurred in San Mateo County.

21 7. JURY TRIAL DEMANDED: PLAINTIFF DEMANDS A JURY TRIAL IN
 22 THIS CASE

23 24 25 **PARTIES**

26 8. Plaintiff, Jane Doe, (herin after "PLAINTIFF") is a citizen of the United States and
 27 resident of the state of California who was raped and sodomized by San Jose Police Officer
 28

1 Jay Mason (herin after "MASON") at his residence in San Mateo on or about November 5, 2005,
2 then arrested by San Mateo Police for drunk in public and booked into San Mateo County Jail on
3 November 5, 2005.

4 9. Defendant CITY OF SAN MATEO, (herin after "CITY") is at all material times
5 referred to herin, was, a division of the State of California, that maintained or permitted an
6 official policy or custom or practice causing or permitting the occurrence of all state law and
7 constitutional violations complained of herin, which damaged the plaintiff as herin alleged.
8 Plaintiff's allegations against the CITY are based on acts and omissions of persons who are City
9 employees, and on the City's breach of its duty to the plaintiff's right to due process and equal
10 protection of the laws.
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12 10. Defendant SAN MATEO POLICE DEPARTMENT, (herin after "POLICE") is at
13 all material times referred to herin, was, a division of the State of California, that maintained or
14 permitted an official policy or custom or practice causing or permitting the occurrence of all state
15 law and constitutional violations complained of herin, which damaged the plaintiff as herin
16 alleged. Plaintiff's allegations against the POLICE are based on acts and omissions of persons
17 who are City and POLICE employees, and on the POLICE'S breach of its duty to the plaintiff's
18 right to due process and equal protection of the laws.
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20 11. Defendant SAN MATEO POLICE CHIEF SUSAN E. MANHEIMER (herin after
21 "MANHEIMER") is, and at all material times referred to herin, was duly elected Police Chief of
22 the city of San Mateo, responsible for making, overseeing, and implementing the policies,
23 practices, and customs challenged herin, relating to the policies, practices, and customs of the San
24 Mateo Police Department. MANHIEMER is sued in her individual and official capacities.
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1 12. Defendant OFFICER SHANDON MURPHY, (herin after "MURPHY") is, and at
2 all material times referred to herin, is a Police Officer employed by the City of San Mateo, San
3 Mateo Police Department. At all times pertinent herein, defendant MURPHY was acting under
4 color of law and in his capacity as a San Mateo Police Officer, and under the authority, policy,
5 procedure, custom and practice of the San Mateo police department. MURPHY is sued in his
6 individual and official capacity based on acts and omission of acts, negligence, denial of the
7 plaintiff's right to due process, medical attention, discrimination, conspiracy to discriminate, and
8 denial of the plaintiff's right to equal protection as secured under the constitution of the United
9 States.
10

11 13. Defendant OFFICER JOSEPH YANSUKA, (herin after "YANSUKA") is, and at
12 all material times referred to herin, is a Police Officer employed by the City of San Mateo, San
13 Mateo Police Department. At all times pertinent herein, defendant YANSUKA was acting under
14 color of law and in his capacity as a San Mateo Police Officer, and under the authority, policy,
15 procedure, custom and practice of the San Mateo police department. YANSUKA is sued in his
16 individual and official capacity based on acts and omission of acts, negligence, denial of the
17 plaintiff's right to due process, medical attention, discrimination, conspiracy to discriminate, and
18 denial of the plaintiff's right to equal protection as secured under the constitution of the United
19 States.
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21 14. Defendant SGT. PERUCCI, (herin after "PERUCCI") is, and at all material times
22 referred to herin, is a Police Sergeant employed by the City of San Mateo, San Mateo Police
23 Department. At all times pertinent herein, defendant PERUCCI was acting under color of law and
24 in his capacity as a San Mateo Police Sergeant/ Supervisor, and under the authority, policy,
25 procedure, custom and practice of the San Mateo police department. PERUCCI is sued in his
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1 individual and official capacity based on acts and omission of acts, negligence, failure to train,
2 failure to supervise, failure to investigate, denial of the plaintiff's right to due process, medical
3 attention, discrimination, conspiracy to discriminate, and denial of the plaintiff's right to equal
4 protection as secured under the constitution of the United States.

5 15. Defendant TONYA NUE, (herin after "NUE") is, and at all material times referred
6 to herin, is a Police Detective employed by the City of San Mateo, San Mateo Police Department.
7 At all times pertinent herein, defendant NUE was acting under color of law and in her capacity as
8 a San Mateo Police Officer, and under the authority, policy, procedure, custom and practice of the
9 San Mateo police department. NUE is sued in her individual and official capacity based on acts
10 and omission of acts, negligence, failure to investigate and report, discrimination, denial of the
11 plaintiff's right to due process and access to the courts, and denial of the Plaintiff's right to equal
12 protection as secured under the constitution of the United States.

13 16. Defendant ALAN PARISIAN, (herin after "PARISIAN") is, and at all material
14 times referred to herin, is a Lieutenant employed by the City of San Mateo, San Mateo Police
15 Department. At all times pertinent herein, defendant PARISIAN was acting under color of law
16 and in his capacity as a San Mateo Police Officer, and under the authority, policy, procedure,
17 custom and practice of the San Mateo police department. PARISIAN is sued in his individual and
18 official capacity based on acts and omission of acts, discrimination, conspiracy to discriminate,
19 denial of the plaintiff's right to due process and access to the courts, and denial of the plaintiff's
20 right to equal protection as secured under the constitution of the United States.

21 17. Defendants SAN MATEO POLICE OFFICERS (hereinafter "POLICE") are sued
22 herin by their fictitious names (Does 1 through 100) are all police officers employed by the City
23 of San Mateo, San Mateo Police Department. At all times pertinent herein, defendants POLICE
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1 were acting under color of law and in their capacity as San Mateo Police Officer's, and under the
2 authority, policy, procedure, custom and practice of the San Mateo police department.

3 Defendants POLICE are sued in their individual and official capacity based on their acts and
4 omission of acts, discrimination, conspiracy to discriminate, denial of the plaintiff's right to due
5 process and access to the courts, and denial of the plaintiff's right to equal protection as secured
6 under the constitution of the United States.
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8 18. Defendant COUNTY OF SAN MATEO, (herein after "COUNTY") is at all
9 material times referred to herin, was, a division of the State of California, that maintained or
10 permitted an official policy or custom or practice causing or permitting the occurrence the all
11 state law and constitutional violations complained of herin, which damaged the plaintiff as herin
12 alleged. Plaintiff's allegations against the COUNTY are based on acts and omissions of persons
13 who are County employees, and on the County's breach of its duty to protect the Plaintiff from
14 the wrongful conduct of said persons and employees.
15

16 19. Defendant SAN MATEO COUNTY SHERIFF'S OFFICE, (herein after
17 "COUNTY JAIL") is at all material times referred to herin, was, a division of the State of
18 California, that maintained or permitted an official policy or custom or practice causing or
19 permitting the occurrence the all state law and constitutional violations complained of herin,
20 which damaged the plaintiff as herin alleged. Plaintiff's allegations against the COUNTY JAIL
21 are based on acts and omissions of persons who are County employees, and on the County's
22 breach of its duty to protect the Plaintiff from the wrongful conduct of said persons and
23 employees.
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25 20. Defendant former SAN MATEO COUNTY SHERIFF DON HORSLEY, (herein
26 after "SHERIFF HORSLEY") is, and at all material times referred to herin, was duly elected
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1 Sheriff of the county of San Mateo, responsible for administering the Jail facilities and for
2 making, overseeing, and implementing the policies, practices, and customs challenged herin,
3 relating to the operation of the San Mateo County Jail. HORSLEY is sued in his individual and
4 former official capacities.

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6 21. Defendant DEPUTY SUZANNE BLICK, (herin after "BLICK") is, and at all
7 material times referred to herin, is a DEPUTY employed by the COUNTY of San Mateo, San
8 Mateo County Sheriff's Office. At all times pertinent herein, defendant BLICK was acting under
9 color of law and in her capacity as a San Mateo Sheriffs deputy, and under the authority, policy,
10 procedure, custom and practice of the San Mateo County Sheriff's Office, BLICK is sued in her
11 individual and official capacity based on acts and omission of acts, negligence, denial of the
12 plaintiff's right to due process, denial of medical attention, discrimination, and denial of the
13 plaintiff's right to equal protection as secured under the constitution of the United Sates. As part
14 of her duties at COUNTY Jail, BLICK subjected the Plaintiff to strip search prior to being
15 arraigned and/or without the defendants first having, a recording in writing, and a reasonable
16 suspicion that the search would be productive of contraband or weapons.
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19 22. Defendant Lt. VICTORIA O'BRIEN, (herin after "O'BRIEN") is, and at all
20 material times referred to herin, is a Lieutenant employed by the COUNTY of SAN MATEO, San
21 Mateo County Sheriff's Office. At all times pertinent herein, defendant O'BRIEN was acting
22 under color of law and in her capacity as a Lieutenant, and under the authority, policy, procedure,
23 custom and practice of the San Mateo County Sheriff's Office, O'BRIEN is sued in her individual
24 and official capacity based on acts and omission of acts, failure to investigate, discrimination,
25 conspiracy to discriminate and cover up crimes, and denial of the plaintiff's right to due process
26 and right to access the courts as secured under the constitution of the United States.
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1 23. Defendant SGT. GIL RODRIGUEZ, (herin after "RODRIGUEZ") is, and at all
2 material times referred to herin, is a Sergeant employed by the COUNTY of SAN MATEO, San
3 Mateo County Sheriff's Office. At all times pertinent herein, defendant RODRIGUEZ was acting
4 under color of law and in his capacity as a Sergeant, and under the authority, policy, procedure,
5 custom and practice of the San Mateo County Sheriff's Office, RODRIGUEZ is sued in his
6 individual and official capacity based on acts and omission of acts, failure to investigate,
7 discrimination, conspiracy to discriminate and cover up crimes, and denial of the plaintiff's right
8 to due process and right to access the courts as secured under the constitution of the United
9 States.
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11 24. Defendant KATHERYN ALBERTIE, (herin after "ALBERTIE") is, and at all
12 material times referred to herin, is a deputy employed by the COUNTY of San Mateo, San Mateo
13 County Counsel's Office. ALBERTIE is sued in her individual capacitate for acts and omissions
14 of acts, malicious abuse of process, and intentional interference to access to the courts.
15

16 25. Defendant SAN MATEO COUNTY SHERIFF DEPUTIES (hereinafter
17 "DEPUTIES") are sued herin by their fictitious names (Does 1 through 100) are all deputies who,
18 as a part of their duties at San Mateo Jail subjected the Plaintiff to strip search prior to being
19 arraigned and/or without the defendants first having, a recording in writing, a reasonable
20 suspicion that the search would be productive of contraband or weapons. DEPUTIES
21 discriminated against the plaintiff, conspired to cover up crimes, denied the plaintiff of her right
22 to due process and medical attention, and denied the plaintiff of her right to equal protection
23 under the constitution of the United Sates.
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25 26. Defendant JAMES MASON, (herin after "MASON") is, and at all material times
26 referred to herin, is a off duty Police Officer employed by the CITY of SAN JOSE, San Jose
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1 Police Department. MASON is sued in his individual capacity based on acts and omission of acts,
2 conspiracy to discriminate and deny the plaintiff of her right to equal protection as secured under
3 the constitution of the United States.

4 27. Defendant CITY OF SAN JOSE, (herein after "CITY OF SAN JOSE") is at all
5 material times referred to herin, was, a division of the State of California, that maintained or
6 permitted an official policy or custom or practice causing or permitting the occurrence of all
7 kinds of wrongs complained of herin, which damaged the plaintiff as herin alleged. Plaintiff's
8 allegations against the CITY OF SAN JOSE are based on acts and omissions of persons who are
9 employees of the CITY OF SAN JOSE, and on the CITY OF SAN JOSE'S negligent hiring,
10 retention, and training of its employees.
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12 28. Defendant SAN JOSE POLICE DEPARTMENT, (herein after "SAN JOSE
13 POLICE DEPARTMENT") is at all material times referred to herin, was, a division of the State
14 of California, that maintained or permitted an official policy or custom or practice causing or
15 permitting the occurrence of all kinds of wrongs complained of herin, which damaged the
16 plaintiff as herin alleged. Plaintiff's allegations against the San Jose POLICE DEPARTMENT are
17 based on acts and omissions of persons who are employees of the San Jose POLICE
18 DEPARTMENT, and on the San Jose POLICE DEPARTMENT negligent hiring, retention, and
19 training of its employees.
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21 29. Defendant SAN JOSE POLICE CHIEF ROBER DAVIS (herin after "DAVIS") is,
22 and at all material times referred to herin, was duly elected Police Chief of the City of San Jose,
23 responsible for making, overseeing, and implementing the policies, practices, and customs
24 challenged herin, relating to the policies, practices, and customs of the San Jose Police
25 Department. DAVIS is sued in his individual and official capacities.
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1 30. Defendant CITY OF BURLINGAME, (herin after "BURLINGAME") is at all
2 material times referred to herin, was, a division of the State of California, that maintained or
3 permitted an official policy or custom or practice causing or permitting the occurrence of all state
4 law and constitutional violations complained of herin, which damaged the plaintiff as herin
5 alleged. Plaintiff's allegations against the Burlingame are based on acts and omissions of persons
6 who are City employees, and on the City's breech of its duty to the plaintiff's right to due process
7 and equal protection of the laws, and on the Burlingame Police Department's negligent hiring,
8 retention, and training of its employees.
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10 31. Defendant BURLINGAME POLICE DEPARTMENT, (herin after
11 "BURLINGAME POLICE") is at all material times referred to herin, was, a division of the State
12 of California, that maintained or permitted an official policy or custom or practice causing or
13 permitting the occurrence of all state law and constitutional violations complained of herin,
14 which damaged the plaintiff as herin alleged. Plaintiff's allegations against BURLINGAME
15 POLICE are based on acts and omissions of persons who are city and police employees, and on
16 the police's breech of its duty to the plaintiff's right to due process and equal protection of the
17 laws, and on the Burlingame Police Department's negligent hiring, retention, and training of its
18 employees.
19

20 32. Defendant CHIEF JACK VAN ETEN (herin after "VAN ETEN") is, and at all
21 material times referred to herin, was duly elected Police Chief of the city of Burlingame,
22 responsible for making, overseeing, and implementing the policies, practices, and customs
23 challenged herin, relating to the policies, practices, and customs of the Burlingame Police
24 Department. VAN ETEN is sued in his individual and official capacities.
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1 33. Defendant OFFICER/INSPECTOR KEVIN KASHIWAHARA, (herin after
2 "KASHIWAHARA") is, and at all material times referred to herin, is an off-duty Police Officer
3 employed by the Burlingame Police Department. At all times pertinent herein, defendant
4 KASHIWAHARA was acting as an individual and in his capacity as an off-duty Burlingame
5 Police Officer. KASHIWAHARA is sued in his individual capacity based on acts and omission of
6 acts, conspiracy to discriminate and deny the plaintiff' of her right to equal protection as secured
7 under the constitution of the United States.
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9 34. Defendant OFFICER STEVE VEGA, (herin after "VEGA") is, and at all material
10 times referred to herin, is a Police Officer employed by the Burlingame Police Department. At all
11 times pertinent herein, defendant VEGA was acting under color of law and in his capacity as a
12 Burlingame Police Officer, and under the authority, policy, procedure, custom and practice of the
13 Burlingame police department. VEGA is sued in his individual and official capacity based on acts
14 and omission of acts, denial of the plaintiff's right to due process, discrimination, conspiracy to
15 discriminate, and denial of the plaintiff's right to equal protection as secured under the
16 constitution of the United States.
17
18

19 35. Defendants DOES 1-200, inclusive, are as yet unidentified entities, agencies, and/
20 or individuals responsible for some or all of the following:

- 21 a. oversight, care, and treatment of the Plaintiff while she was in police department
22 and county jail custody and/ or control at the times alleged herin, and while defendant was
23 acting under color of law.
24
25 b. hiring, training, and/or supervision of individual San Mateo Police officers and
26 San Mateo County deputies who were responsible for the care and treatment of the
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1 plaintiff while she was in police department and County Jail custody and/ or control at the
2 times alleged herin;

3 c. establishment or implementation of appropriate policy, procedure, custom, and
4 practice for San Mateo Police and County Deputies and/ or for ensuring appropriate
5 policies, procedures, customs and practices were followed by San Mateo police officers
6 and County deputies at the time alleged herin;

7
8 d. conspiring to discriminate against the plaintiff and covering up crimes, and
9 denying the plaintiff of her right to equal protection and access to the courts.

10 e. taking corrective action to remedy any constitutional violations by officers and
11 deputies under defendant's supervision.
12

13 36. All material times mentioned herin, each of the defendant was acting under the
14 color of law, to wit, under color of statutes, ordinances, regulations, policies, customs, and usage
15 of the State of California, The City of San Mateo, The San Mateo Police Department, The County
16 of San Mateo, San Mateo County Jail, and the San Mateo County's Sheriff's office.
17

18
19 **FACTS**

20 37. On November 4, 2005, sometime between 11:45 pm and 12:45 am, the
21 PLAINTIFF was raped and sodomized by San Jose Police Officer Jay Mason (herin after
22 "MASON") at his residence in San Mateo California.

23 38. At the time Mason sodomized the plaintiff, she was moving in and out of
24 consciousness, and did not consent to these acts. When she was lucid, the plaintiff told Mason
25 that he was hurting her, and demanded he stop. Mason refused and pulled her hair.
26

27 39. At some point later in the early hours of November 5, 2005, Plaintiff awoke again,
28 and in pain. She was aware of pornography playing on the television, and felt Mason's penis in

1 her vagina and saw him on top of her. After a few moments she again lost consciousness.

2 Plaintiff was too intoxicated to react.

3 40. Mason later admitted to ejaculating on the plaintiff's face when he was done.

4 Plaintiff was unconscious or asleep at the time and did not consent to these acts.

5 41. Plaintiff next awoke to Mason throwing her clothing and effects at her, and telling
6 her to leave. At this time the Plaintiff was still severely intoxicated and disoriented. The plaintiff
7 had trouble comprehending her surroundings, had trouble recalling what had occurred, and had
8 difficulty standing.
9

10 42. Mason telephoned the police and informed them that he was a police officer and
11 falsely reported that the plaintiff was assaulting him. Upon hearing Mason on the telephone from
12 another room in the house, the plaintiff walked to where Mason stood and asked to speak to the
13 police. The plaintiff asked Mason to give her the telephone receiver, and tried to take it from his
14 hands.
15

16 43. The dispatcher ran a check on Mason to verify that he was in fact a police officer
17 and shortly there after, at 1:10 a.m., three (3) male uniformed POLICE officers arrived to the
18 scene, Officer Murphy (herin after "MURPHY"), Officer Yanuska (herin after "YANUSKA") and
19 officer Perucci (herin after "PERUCCI"). Mason identified himself as a Police Officer again and
20 Officer MURPHY asked the plaintiff to come with him.
21

22 44. Officer MURPHY escorted the 120 lb plaintiff to his patrol car as she was crying
23 MASON just sodomized her and she needed to be taken to the hospital. MURPHY ignored the
24 plaintiff request medical attention and ordered the Plaintiff to get in the back seat of his patrol car.
25

26 45. MURPHY then locked the plaintiff in his patrol car and went back to speak with
27 Officer YANUSKA, PERUCCI and MASON.
28

1 46. MURPHY, MASON, YANSUKA, PERUCCI, and POLICE Does 1-100, in
2 concerted action and agreement, conspired to intentionally discriminate against the plaintiff as a
3 woman and victim of domestic violence to deny the plaintiff of her right to equal protection under
4 the laws.

5 47. When officer MURPHY returned to the patrol car, he informed the plaintiff that he
6 was taking her to COUNTY JAIL. MURPHY had the Plaintiff get out from back of the patrol car
7 and turn around. MURPHY then handcuffed and arrested the plaintiff for “drunk in public” as she
8 was crying she was sodomized by MASON.

9 48. Plaintiff was still disoriented at the time and did not know why she was being
10 arrested and continued to cry that MASON sodomized her and demanded to be taken to the
11 hospital. Officer MURPHY continued to ignore the Plaintiff’s cries for help and YANUSKA just
12 laughed and did nothing. The plaintiff was taken to County Jail in MURPHY’S patrol car.

13 49. Upon arrival to COUNTY JAIL, MURPHY woke the PLAINTIFF and pulled her
14 out from the patrol car because she had difficulty getting up and standing on her own. MURPHY
15 walked the plaintiff inside and conspired with DEPUTIES and defendant Deputy Suzanne Blick
16 (herin after “BLICK”) to discriminate against the plaintiff, cover up MASON’S crime, and deny
17 the plaintiff of her right to equal protection.

18 50. Defendants DEPUTIES and BLICK patted the plaintiff down, removed and
19 arranged some of the Plaintiff’s clothing so as to permit a visual inspection of her underclothing,
20 breasts, and buttocks, and conducted an unlawful strip search upon the plaintiff while she was
21 moving in and out of consciousness after she had been raped and sodomized.

22 51. The plaintiff was fingerprinted and photographed crying with MASON’S semen
23 on her face, then picked up by DEPUTIES and thrown into a jail cell in isolation.
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1 52. While in the jail cell, the plaintiff was crying, intoxicated, disoriented, and
2 confused as to where she was, how she got there and why. The plaintiff used the intercom and
3 asked why she was in jail. The plaintiff was informed by a DEPUTIE “the minute you stepped
4 out the front door you were drunk in public”.

5 53. MASON and POLICE entrapped the plaintiff and arrested her for “drunk in
6 public” after she had been raped and sodomized.

7 54. The plaintiff cried again that she was sodomized by a cop and demanded to be
8 taken to the hospital to get swabbed. JAIL DEPUTIES laughed and made inappropriate jokes
9 such as “Domino’s Pizza”. Plaintiff demanded a breathalyzer, but DEPUTIES ignored her
10 demands and continued to mock and discriminate against the plaintiff.
11

12 55. At one point, DEPUTIES and defendant BLICK, with deliberate and reckless
13 indifference, converged around the plaintiff’s jail cell while putting on blue plastic gloves in a
14 threatening manner to scare the plaintiff and demanded that she shut up.
15

16 56. While the plaintiff was locked up in a jail cell, defendant MURPHY called
17 MASON on his cell phone and further conspired with him to cover up MASON’S crime of rape
18 and falsify the police report.
19

20 57. Although Mason had perpetrated the crime of rape upon the plaintiff and Mason
21 was in violation section 261 (3) (4) (a) (b) (6) and 286 (3) (f) (1) (2) (i) (k) of California Penal
22 Code, POLICE, DEPUTIES, CITY, COUNTY, and DOES 1-200 did nothing to help the plaintiff
23 and intentionally and deliberately failed to investigate Mason’s crime. Defendants deliberately
24 denied the plaintiff of her right to medical attention and locked her up in a jail cell after she had
25 been raped and sodomized. Defendants were in violation of California Penal code 264.2 which
26 specifies the minimum standards for treatment for victims of sexual assault.
27
28

Section 261 (3) & (4) (6) of the California Penal Code provides:

(a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

(3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.

(4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

Was unconscious or asleep.

(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison

Section 286 (f) (1) (2) (i) of the California Penal Code specifically provides:

(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(i) Any person who commits an act of sodomy, where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for three, six, or eight years.

1 **Section 261, subdivision (a)(3)** proscribes sexual intercourse with a person who is
2 not capable of giving legal consent because of intoxication. The issue is not whether the victim
3 actually consented to sexual intercourse, but whether he or she was capable of exercising the
4 degree of judgment a person must have in order to give legally cognizable consent.

5 58. Defendants subjected or caused the plaintiff to be subjected to violations of her
6 California state legal rights and United States Constitutional rights after she had been raped.
7 Defendants deliberately and intentionally conspired to discriminate against the plaintiff, denied
8 the plaintiff of her right to medical attention, denied her of her right to equal protection, locked
9 her up in a jail cell and covered up evidence of Mason's crime of rape.
10

11 59. Defendants deliberately and intentionally failed to investigate the plaintiff's
12 allegations of rape against Mason, deliberately and intentionally failed to administer a drug and
13 alcohol test upon the plaintiff, and deliberately denied the plaintiff of her right to a rape trauma
14 counselor as required by California state law.
15

16 60. Plaintiff was released from jail approximately six hours later at 7:30 a.m. without
17 charges pressed against her. When the plaintiff stepped out side, she was terrified, disoriented,
18 and in desperate need of an ambulance. The plaintiff began to dial 911, but stopped dialing when
19 she realized she was calling the POLICE and feared she would be taken back to jail for "drunk in
20 public".
21

22 61. The plaintiff was traumatized. The plaintiff had never been raped, sodomized,
23 arrested, strip searched, or thrown in jail until that night. And all this was done to the plaintiff in
24 one night within approximately one to two hours by POLICE OFFICERS, the very same people
25 she thought were hired to serve and protect. The plaintiff returned home in utter exhaustion,
26 delirium, confusion, and distress along with a profound sense of embarrassment, humiliation, and
27
28

1 shame. The plaintiff was reluctant to discuss this event with anyone, even close friends and
2 family.

3 62. The Plaintiff developed various psychological coping mechanisms, such as
4 repression and disassociation in response to the trauma. Plaintiff suffered and continues to suffer
5 from intrusive nightmares, traumatizing flashbacks, and loss of enjoyment of life. Defendant's
6 acts were unlawful, malicious, wanton, and oppressive.

8 63. The Plaintiff contacted San Mateo Police Department and asked for a copy of the
9 POLICE report. The Plaintiff was told she could not have the police report because she was "not
10 the victim."

12 64. On January 19, 2006, without any evidence that she had been raped sodomized, or
13 sex of any kind had occurred that nigh, and with the POLICE covering up Mason's crime, the
14 plaintiff met with Sgt. Ricky Goede (herin after "GOEDE") and another Male OFFICER of San
15 Jose Police Internal Affairs Unit and informed them that she was scared of Mason and that he
16 abused his power as a police officer and maliciously conspired with police to cause her arrest.

18 65. The plaintiff informed GOEDE that she was afraid MASON would retaliate
19 against the plaintiff if she complained. The plaintiff informed GOEDE that Mason has threatened
20 to use his police officer friends and his position as a police officer against the plaintiff. The
21 plaintiff also informed GEODE that Mason has scared the plaintiff in the past and told her that
22 POLICE beat people in JAIL and they have a "code of silence" to cover up their misconduct.

24 66. GOEDE informed the plaintiff that she would investigate the plaintiff's allegations
25 and send her a letter with a written outcome of it. GOEDE assured the plaintiff that she would be
26 safe to go to the places she normally frequents without fearing Mason.

1 67. When the Plaintiff followed up with GOEDE to find out when she would receive
2 the results of the investigation, GOEDE informed the plaintiff that there would be no
3 investigation. GOEDE informed the Plaintiff that they were there to protect MASON and the
4 POLICE DEPARTMENT.

5 68. Plaintiff later learned that both the San Jose Police Department and the
6 Burlingame Police Department hired MASON as a police officer after knowing he had a criminal
7 record (San Mateo County Superior Court Case No. CM118728). MASON was forced to resign
8 and/ or fired as detective from the Burlingame Police Department after a female citizen
9 complained that he was stalking and harassing her. He was then hired by the San Jose Police
10 Department as a patrol officer for the domestic violence unit.
11

12 69. On February, 6, 2006, the plaintiff met with Lt. Tom Daughtry (herin after
13 "DAUGHTRY") of the San Mateo POLICE DEPARTMENT and made a complaint against
14 OFFICER Murphy for misconduct. DAUGHTRY informed the plaintiff that he would investigate
15 her complaint against MURPHY, but if the plaintiff wanted to make a complaint against the
16 DEPUTIES, she would have to make it with the San Mateo COUNTY Sheriff's office because
17 they are a different agency.
18

19 70. Several weeks later, SAN MATEO POLICE informed the plaintiff that they did an
20 investigation and interviewed witnesses such as Mason (the perpetrator of the crime), the
21 Sheriff's DEPUTIES, and San Mateo POLICE OFFICER'S, and everyone said the plaintiff was
22 drunk; therefore Officer MURPHY did nothing wrong.
23

24 71. Even though POLICE had obtained evidence through their internal affairs
25 investigation that MASON had perpetrated the crime of rape under California state law, and
26 MASON was in violation of 261 and 286 of the California Penal Code, San Mateo POLICE and
27
28

1 its Chief Susan E. Manheimer (herin after MANHEIMER ") approved of MASON'S and
2 MURPHY'S unlawful conduct. The POLICE and MANHEIMER'S approval of MURPHY'S and
3 MASON'S unlawful acts reflects a deliberate indifference to the violations of the plaintiff's legal
4 and constitutional rights and indicates that the San Mateo Police Department's policies and /or
5 customs condoned unlawful and unconstitutional conduct of its POLICE Officers.
6

7 72. On March 16, 2006 the plaintiff met with Lt. DAUGHTRY again and filed a
8 second report of un-consented sodomy against MASON and tape recorded the interview.
9 DAUGHTRY then wrote a few brief misconstrued and misleading paragraphs about it.

10 73. Shortly thereafter, the plaintiff received a call from a female officer of San Mateo
11 POLICE Department advising her to obtain a restraining order against Mason. The plaintiff
12 obtained a Temporary Restraining Order (TRO) against Mason and went to the POLICE
13 Department in person to pick up a copy of the police report for the hearing set in San Mateo
14 County Superior Court. But when the plaintiff arrived, POLICE told her that she could not have
15 the police report, because if the POLICE released the report to the plaintiff, it would then become
16 public record and the media would then have access to it.
17

18 74. Defendants POLICE intentionally interfered with the plaintiffs right to access the
19 courts and denied the plaintiff of her right to MURPHY'S POLICE report for the court hearing to
20 obtain a permanent restraining order.
21

22 75. Plaintiff was then contacted by Detective Tonya Nue (herin after "NUE") of the
23 San Mateo Police Department and told that she would be handling the investigation.
24

25 76. Detective NUE informed the plaintiff that she had been arrested because she was
26 too intoxicated to care for her own safety. Detective NUE also informed the plaintiff that due to
27 her level of intoxication, the plaintiff was unable to consent to sex of any kind.
28

1 77. Detective NUE informed the plaintiff that she would obtain a copy of the
2 surveillance tape from the restaurant earlier that night, interview witnesses, and send the report to
3 the District Attorneys Office.

4 78. Plaintiff informed NUE that she was afraid of Mason and he has threatened to use
5 his police officer friends to have her arrested. Detective NUE asked the plaintiff if she knew the
6 names of Police Officers. Plaintiff informed NUE that the only name she knew was Inspector
7 Kevin KASHIWAHARA of the Burlingame POLICE Department.
8

9 79. Shortly thereafter, on April 5, 2006, Mason violated the Plaintiff's restraining
10 order while in the company of Burlingame POLICE Officer's. When the plaintiff informed NUE
11 of Mason's restraining order violation, NUE told the plaintiff that there was no way to prove it
12 and immediately asked for the name of the Burlingame Police Officer who took her police report.
13

14 80. NUE then contacted the Burlingame POLICE Department by phone and conspired
15 with POLICE to falsify and misconstrue the Plaintiff's police report and to intentionally omit the
16 fact that Mason was with POLICE officers when he violated the plaintiff's restraining order.
17

18 81. On May 31, 2006 Mason violated the restraining order again. This time, Mason
19 used his Burlingame Police Officer friend's Inspector Kevin Kashiwahara (herin after
20 "KASHIWAHARA") and Officer Steve Vega (herin after "VEGA"), to stalk, harass, and
21 intimidate the plaintiff.

22 82. Officer VEGA, dressed in uniform, approached the plaintiff where she was at a
23 table in a restaurant and asked the plaintiff to come outside with him. VEGA informed the
24 plaintiff that MASON was in the restaurant and she had to leave or he would arrest her. The
25 plaintiff asked VEGA if he was friends with MASON and he said "Yes". The plaintiff went into a
26 panic attack and told VEGA she was calling the police. VEGA yelled "I am the Police!" The
27
28

1 plaintiff called police, Vega demanded that the plaintiff tell the dispatcher that VEGA was there,
2 and one of VEGA'S subordinate Officers eventually showed up and later wrote a police report.
3 The report was then inspected, and further misconstrued, and falsified by Mason's friend
4 Inspector KASHIWAHARA.

5 83. The plaintiff later learned that MASON'S friend and former co-worker Police
6 Officer KASHIWAHARA telephoned Officer VEGA on his cell phone to plot, plan, and conspire
7 against the plaintiff.
8

9 84. Officer VEGA knew that MASON was under a court order to stay 100 yards away
10 from the plaintiff and MASON was in violation of the plaintiff's restraining order. And in
11 deliberate and concerted action, MASON, Officer KASHIWAHARA, and Officer VEGA
12 conspired to deny the plaintiff equal protection under the laws, and subjected the plaintiff or
13 caused the plaintiff to be subjected to violations of her California State rights and United States
14 Constitutional rights.
15

16 85. When the plaintiff called the District Attorney's Office to see what corrective and
17 preventative action would be taken, the plaintiff was told that all they could do is send a letter to
18 Mason's employer, the San Jose Police Department. The same department that refused to
19 investigate the plaintiff's allegations against Mason because "they were there to protect MASON
20 and the POLICE Department," not the plaintiff.
21

22 86. After several more months went by, Detective NUE'S police report had not been
23 sent to District Attorneys Office for review. During this time, the plaintiff's calls to NUE went
24 unanswered and unreturned.
25

26 87. Plaintiff later learned that Mason, and through his attorney Harry Stern, was
27 conspiring with San Mateo POLICE, the CITY, the COUNTY, MURPHY, YANSUKA, NUE,
28

1 DAUGHTRY, PARISIAN, the BURLINGAME POLICE DEPARTMENT and Defendants Does
2 1-200 to cover up MASON'S, MURPHY'S, POLICE, and DEPUTIES unlawful conduct.
3 Defendants conspired to discriminate against the plaintiff, deny her of her right to equal
4 protection, and impede her right to access the courts.

5 88. Because the plaintiff's calls to NUE were unanswered and unreturned, the plaintiff
6 was forced to write a letter to POLICE CHIEF MANHEIMER regarding the status of NUE'S
7 investigation. MANHEIMER instructed the plaintiff via US mail to contact Lt. Alan PARISIAN
8 at the San Mateo Police Department. When the plaintiff spoke with Lt. PARISIAN in August
9 2006, approximately five months after the plaintiff had made her report with NUE; PARISIAN
10 informed the plaintiff that Detective NUE had other cases that were more important than the
11 plaintiff's case.
12

13 89. Plaintiff is informed and believes and thereon alleges that Mason met with Sgt.
14 Parisian (herin after "PARISIAN ") in person to further conspire and discriminate against the
15 plaintiff, and cover up Mason's crime and the unlawful conduct of San Mateo POLICE officers.
16

17 90. When the report finally made it to the District Attorneys Office for review, the
18 plaintiff was told that Karen Guidotti (herin after "GUIDOTTI") declined to prosecute. The
19 plaintiff telephoned GUIDOTTI for an explanation. GUIDOTTI laughed sadistically and said, to
20 the plaintiff "Of course you were violated (by MASON), but you filed a claim against the CITY
21 (POLICE)." The plaintiff then requested the explanation from Guidotti in writing, but
22 GUIDOTTI refused. The plaintiff asked GUIDOTTI who her supervisor was and who else there
23 was that the plaintiff could go to for help. GUIDOTTI laughed again and said "No one, I'm it!"
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1 91. Upon review of NUE'S POLICE report, there is no indication that NUE
2 investigated and interviewed any witnesses and DEPUTIES to the night of the incident during the
3 six month long investigation into the plaintiff's sexual assault.

4 92. Defendants, SAN MATEO POLICE, Detective NUE, SUSAN E.
5 MANHEIMEER, Lt. Alan PARISIAN, COUNTY, CITY, GUIDOTTI and Does 1-100
6 discriminated against the plaintiff, deliberately and intentionally failed to investigate and report,
7 and conspired to cover up Mason's crime and the misconduct of its POLICE officer's and
8 Sheriff's DEPUTIES. Defendants conspired to deny the plaintiff of her right to access to the
9 courts and conspired to deny the plaintiff of her right to equal protection under the laws.

10 93. On September 16, 2006 the PLAINTIFF met with Karen GUIDOTTI'S supervisor,
11 Chief Deputy District Attorney Steve Wagstaffe (herin after "WAGSATFFE") and tape recorded
12 the interview. WAGSTAFFE agreed to bring a copy of the police report to the meeting, but he
13 intentionally failed to do so. Instead, WAGSTAFFE egregiously tried to convince the plaintiff
14 that the victim report drafted by Lt. Tom DAUGHTRY and Detective NUE was the same police
15 report taken by MURPHY the night the plaintiff was raped.

16 94. Plaintiff informed WAGSTAFFE, that on March 14, 2006, she made an Internal
17 Affairs complaint with Sgt. Gil Rodriguez (herin after "RODRIGUEZ") and Lt. Victoria O'Brien
18 (herin after "O'BRIEN") of the San Mateo COUNTY Sheriff's Office against the DEPUTIES for
19 discriminating against her, mocking her, denying her medical attention, covering up Mason's
20 crime, and intimidating her after she had been raped by MASON. The plaintiff tape recorded that
21 interview as well.

22 95. The Plaintiff informed WAGSTAFFE that she was told by O'BRIEN that the San
23 Mateo County Sheriff's office would conduct an internal affairs investigation and send the
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1 plaintiff a written letter of outcome of the investigation. But when the Plaintiff followed up with
2 O'BRIEN regarding the investigation, all she received was a voice mail from O'BRIEN stating
3 "We are still doing the investigation, but all we have found so far is immature behavior." Plaintiff
4 followed up again with O'BRIEN again regarding the investigation, but the plaintiff's calls and
5 letters to O'BRIEN went intentionally unanswered and unreturned. Plaintiff was then forced to
6 write a letter to former SAN MATEO COUNTY SHERIFF HORSLEY regarding the status of the
7 investigation, but the plaintiff's calls and letters to HORSLEY went intentionally unanswered and
8 unreturned as well.

10 96. Plaintiff informed WAGSTAFFE, in her own words, that San Mateo POLICE, The
11 COUNTY Sheriff's Office, and its DEPUTIES discriminated against the PLAINTIFF, denied her
12 of her right to medical attention, denied her of her right to equal protection, impeded her right to
13 access the courts, covered up MASON'S crime of rape, and was deliberately covering up the
14 misconduct of its DEPUTIES.

16 97. WAGSTAFFE said to the plaintiff "That may well be, but they don't have to do an
17 investigation if they did not want to."

19 98. WAGSTAFFE'S statement and actions to the plaintiff reflects a deliberate
20 indifference to violations of the plaintiff's constitutional rights and indicates that the San Mateo
21 COUNTY Sheriff's Office policies and /or customs condoned unlawful and unconstitutional
22 conduct of its Deputies. It can be adduced that cover-ups and failure to take corrective action
23 against errant deputies and police officers occurred with some frequency.

25 99. WAGSTAFFE informed the plaintiff that he would talk with Lt. O'BRIEN about
26 the Internal Affairs Investigation, obtain a copy of MURPHY'S police report, and get back to the
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1 Plaintiff. Plaintiff attempted to follow up with WAGSAFFE by phone and US mail on numerous
2 occasions after that, but the plaintiff's calls and letters were unreturned by WAGSTAFFE.

3 100. The Plaintiff was forced to contact WAGSTAFFE'S supervisor, District Attorney
4 JAMES P. FOX (herin after "FOX") for an explanation as to why MASON wasn't being
5 prosecuted and why WAGSTAFFE and the COUNTY Sheriff's Office hadn't returned her calls
6 and letters regarding the investigation. The plaintiff's call to FOX was answered by his secretary
7 Pat Kelley (herin after "Kelly"). KELLY said to the plaintiff "Karen GUIDOTTI told us not to
8 talk to you because you filed a lawsuit against us" and hung up the telephone on the plaintiff.
9

10 101. On November 2, 2006 the plaintiff filed a civil state action against MASON for
11 un-consented sodomy and sex in violation of California penal code 261 and 286. It was only until
12 then that the plaintiff was able to obtain the police report taken by officer MURPHY the night of
13 the incident. MURPHY'S report was given to the plaintiff by attorneys for the CITY and the San
14 Mateo POLICE Department.
15

16 102. MURPHY'S police report stated the plaintiff was crying "he (MASON) fucked me
17 in the ass." Murphy wrote that the plaintiff was intoxicated, had difficulty standing up straight,
18 her balance was unsteady, she had bloodshot water eyes, her face was flushed, she said she was
19 going to vomit, and due to level of the plaintiff's intoxication, the plaintiff was unable to care for
20 her own safety.
21

22 103. Murphy's police report indicated that the plaintiff had alleged a violation of 261
23 and 286 of the California penal code. Yet with deliberate indifference, Murphy discriminated
24 against the plaintiff as a woman and intentionally failed to comply with section 264.2 of the
25 California penal code and intentionally denied the plaintiff of her right to medical attention.
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California penal code 264.2 specifically states:

(a) Whenever there is an alleged violation or violations of subdivision (e) of Section 243, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in subparagraph (G) of paragraph (9) of subdivision (c) of Section 13701.

(b) (1) The law enforcement officer, or his or her agency, shall immediately notify the local rape victim counseling center, whenever a victim of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289 is transported to a hospital for any medical evidentiary or physical examination. The victim shall have the right to have a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, and a support person of the victim's choosing present at any medical evidentiary or physical examination.

104. Murphy's police report indicated that Mason said the sex was consensual. But nowhere on Murphy's report does it say that the plaintiff said the sex was consensual.

105. The plaintiff later learned that San Mateo Police further conspired with Mason and his attorney, Harry Stern (herin after "STERN"), and unlawfully provided Mason (the perpetrator of the crime) with the plaintiff's confidential sexual assault report drafted by DAUGHTRY and NUE . The report was given to Mason by POLICE without the plaintiff's consent, without a court order, and without a protective order.

106. During discovery, the plaintiff made several attempts to obtain the information received from the Internal Affairs Investigation conducted by the San Mateo Police Department and the San Mateo County Sheriff's Office, but the requests were denied. At no time during these court proceedings did COUNTY Counsel inform the plaintiff or the courts that the COUNTY Sheriff's Office never even conducted an investigation into the DEPUTIES misconduct.

107. In fact, Deputy COUNTY Counsel, Kathryn Albertie (herin after "ALBERTIE") lied in court documents. ALBERTIE specifically stated in her opposition brief to a pitchess

1 motion "The San Mateo County Sheriff's Office investigated the claim and the Board of
2 Supervisors rejected the plaintiff's claim." And that was the result of the investigation. ALBERTI
3 also wrote that "the only other existing written reports pertaining to the plaintiff on November 5,
4 2005, is the follow-up investigation, which is privileged."

5
6 108. COUNTY Counsel Deputy, Kathryn ALBERTIE, intentionally lied and deceived
7 the plaintiff and the courts by using the Board of Supervisors rejection letter as an exhibit in her
8 opposition to the pitchess motion and egregiously indicated that the COUNTY did an
9 investigation and the Board of Supervisors rejection letter was the outcome of the San Mateo
10 County Sheriff's Office Internal Affairs Investigation. COUNTY Counsel maliciously lied and
11 abused the courts and process to cover up criminal and civil misconduct and interfere with the
12 plaintiff's right to access the courts.
13

14 109. On January 28, 2008, before trial was set to begin, San Mateo County Superior
15 Court judge Joseph E. Bergeron called COUNTY Counsel down to his chambers and asked why
16 Deputy BLICK, the only Deputy named on the Plaintiff's booking sheet, was never interviewed
17 in the internal affairs investigation. COUNTY Counsel then finally admitted for the first time that
18 the San Mateo COUNTY Sheriff's Office never even did an investigation.
19

20 110. Lacking the evidence the plaintiff needed from the COUNTY, the County JAIL,
21 the CITY, and the POLICE, because of their deliberate cover up, and their deliberate failure to
22 investigate and/or failure to adequately investigate and report, the plaintiff dismissed her civil
23 action against Mason on January 30, 2008 before trial commenced.
24

25 111. On February 27, 2008, the plaintiff learned through the discovery of her own that
26 her case against Mason was dismissed *with* prejudice instead of *without* and there was a judgment
27
28

1 in favor of the defendant. When the plaintiff telephoned her attorney for an explanation, he said
2 there must have been some improper conduct amongst the courts and/or Harry STERN.

3 112. The plaintiff phoned the judge's clerk, Karen Caldwell, and informed her of the
4 situation and asked for an explanation. Approximately one week later, the plaintiff received an
5 apology letter from the judge. However, the dismissal *with* prejudice stood, further denying the
6 plaintiff of her right to access the courts.
7

8 113. DEFENDANTS, COUNTY, CITY, POLICE, DEPUTIES, ALBERTIE, and Does
9 1-100 conspired to perpetrate a fraud upon the courts and to cover up civil and criminal
10 misconduct.
11

12 114. The COUNTY, CITY, and Does 1-200 discriminated against the plaintiff and
13 denied the plaintiff her right to equal protection, and violated plaintiff's constitutional right to due
14 process and meaningful access to the courts.

15 115. COUNTY, ALBERTIE, and COUNTY Counsel's fraud upon the courts
16 constitutes an abuse of process. In perpetrating this fraud, DEFENDANTS COUNTY, and Does
17 1-100 maliciously and deliberately interfered with the plaintiff's right to access the courts. The
18 COUNTY wasted the courts and the plaintiff's time and money on frivolous and deceitful
19 motions.
20

21 116. Plaintiff is informed and believes, and thereon alleges, that defendants acted under
22 color of state law and intentionally discriminated against the plaintiff as a woman and victim of
23 domestic violence. Defendants conspired in concerted action and agreement to deprive, directly
24 and/ or indirectly, the plaintiff's right to equal protection under the laws.
25
26
27
28

1 117. Plaintiff is informed and believes, and thereon alleges, that defendants deliberately
2 and with reckless indifference failed to investigate in order to cover up evidence of a criminal and
3 civil misconduct and deny the plaintiff of her right to access the courts.

4 118. Plaintiff is informed and believes, and thereon alleges, that defendants routinely
5 followed their policy, practice and custom of failing to investigate and report civil and criminal
6 misconduct.

7
8 119. Plaintiff is informed and believes, and thereon alleges, that defendant's policies
9 and customs subjected the PLAINTIFF or caused her to be subjected to the deprivation of
10 constitutional rights.

11
12 120. Plaintiff is informed and believes, and thereon alleges, that defendants routinely
13 followed their policy, practice and custom of subjection pre-arraignment of detainees, including
14 plaintiff, to a strip searches without having, and recording in writing, a reasonable suspicion that
15 the search will be productive of contraband or weapons.

16 121. Plaintiff is informed and believes and thereon alleges that BLICK is a rookie
17 Deputy Who's former place of employment was with the San Mateo Police Department.

18
19 122. Plaintiff is informed and believes and thereon alleges that Murphy conspired with
20 his former co-worker BLICK to cover up the plaintiff's allegations of rape and their own police
21 misconduct.

22 123. Plaintiff is informed and believes, and thereon alleges, that defendants acted
23 intentionally and negligently by their acts and omission of acts.

24
25 124. Defendants conduct was malicious, wanton, and oppressive.
26
27
28

125. DEFENDANT POLICE CHIEF SUSAN E. MANHEIMER is personally responsible for the policies, customs, of the San Mateo Police Department's and its failure to adequately investigate, train, and supervise its Police Officers.

126. DEFENDANT former San Mateo County SHERIFF DON HORSLEY is personally responsible for the failure to adequately train, supervise, and investigate its sheriff's deputies and the promulgation and continuation of the strip search policy, practice, and custom to which the plaintiff herein was subjected to and complained of herein.

127. As a result of defendants callous and deliberate indifference, gross negligence, lack of training, negligent supervision, discrimination, denial of medical attention, denial of equal protection, failure to investigate, failure to adequately investigate, failure to report, and the misuse of searches, complained of herein, plaintiff has suffered physical and emotional distress, invasion of privacy, and violation of due process law and state and federal statutory and constitutional rights. The policy or customs of the CITY, COUNTY, SAN MATEO POLICE, and COUNTY JAIL, subjected the plaintiff or caused her to be subjected to the deprivation of constitutional rights.

COUNT I

42 U.S.C § 1983

Discrimination and Denial of Equal protection under the First and Fourteenth Amendment (City, County, Institutional, and Supervisory Defendants)

128. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 127 above as though set forth fully herein.

1 129. Defendants CITY, POLICE, COUNTY, COUNTY JAIL, SAN JOSE POLICE,
2 CITY OF SAN JOSE, MANHEIMER, HORSLEY, DAVIS, SUPERVISORY DEFENDANTS,
3 and DOES 1-200 inclusive et. al. knew or reasonably should have known that the plaintiff was
4 raped by Mason and Mason was in violation of California penal code section 261 and 286.
5 Defendants acted in agreement and concerted actions under the color of law and intentionally
6 discriminated against the plaintiff as a woman and as a victim of domestic violence and denied
7 the plaintiff of her right to equal protection under the laws.
8

9 130. Defendants deliberately and with reckless indifference denied the plaintiff her
10 right to medical attention and access to a Rape Trauma Counselor as required by California State
11 law. Defendants treated her allegations of rape differently than other victims of violence.
12 Defendants intentionally and deliberately ignored the plaintiff and mocked her when she was
13 crying that she was sexually assaulted by Mason and in need of medical attention.
14

15 131. Defendants conspired in furtherance to deny the plaintiff of her of her right to
16 equal protection by intentionally and deliberately failing to investigate and/ or adequately
17 investigate and reporting the plaintiff's allegations of rape, thereby causing further injury to the
18 plaintiff and subjected or caused her to be subjected to violations of her constitutional rights.
19

20 132. Defendants and the Burlingame Police Department maintained or permitted an
21 official policy, practice, and/ or custom which is discriminatory against women and provides less
22 protection to victims of date rape, rape by intoxication, and domestic violence than they do with
23 other victims of violence, and herin violated said plaintiff's right to due process, meaningful
24 access to the courts, and equal protection clause under the First and Fourteenth Amendment, and
25 directly and proximately damaged plaintiff as herin alleged, entitling plaintiff to recover damages
26 for said constitutional violations under 42 U.S.C. § 1983.
27
28

1 133. WHEREFORE, plaintiff prays for relief as hereunder appears.
2
3

4 **COUNT TWO**

5 **42 U.S.C. § 1983**

6 **Discrimination and Denial of Equal protection under the First and Fourteenth Amendment**
7 ***(Individual Defendants)***
8

9 134. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through
10 133 above as though set forth fully herein.

11 135. Defendants MURPHY, BLICK, NUE, PARISIAN, MANHIEMER, JACK VAN
12 ETTEN, HORSLEY, SAN MATEO POLICE OFFICERS Does 1-100 and DEPUTIES Does 1-
13 100 knew or reasonably should have known that the Plaintiff was raped by off duty police officer
14 Mason and he was in violation of California penal code section 261 and 286. Defendants acted in
15 agreement and concerted actions under the color of law and intentionally discriminated against
16 the Plaintiff as a woman and as a victim of domestic violence and denied the plaintiff of her right
17 to meaningful access to the courts and equal protection under the laws .
18

19 136. Defendants deliberately and with reckless indifference denied the Plaintiff medical
20 attention and access to a Rape Trauma Counselor as required by California State law and treated
21 her allegations of rape differently than other victims of violence. Defendants intentionally and
22 deliberately ignored the Plaintiff and mocked her when she was crying that she was assaulted by
23 Mason and in need of medical attention.
24

25 137. Defendants conspired in furtherance to deny the Plaintiff of her right to equal
26 protection of the laws by intentionally and deliberately failing to investigate and/ or adequately
27
28

1 investigate and report the plaintiff's allegations of rape, thereby causing further injury to the
2 plaintiff and subjected or caused her to be subjected to violations of her constitutional rights.

3 138. Defendants KASHIWAHARA and VEGA acted in agreement and concerted
4 actions under the color of law and intentionally discriminated against the Plaintiff as a woman
5 and as a victim of domestic violence and denied the plaintiff of her right to equal protection under
6 the laws.

8 139. Defendants violated said plaintiff's right to due process, meaningful access to the
9 courts, and equal protection under the First and Fourteenth Amendment, and directly and
10 proximately damaged plaintiff as herin alleged, entitling plaintiff to recover damages for said
11 constitutional violations under 42 U.S.C. § 1983.

13 140. WHEREFORE, plaintiff prays for relief as hereunder appears.

15 **COUNT THREE**

16 **42 U.S.C. § 1985 § 1985 (3)**

17 **Conspiracy to Discriminate under the First and Fourteenth Amendment**

18 ***(City, County, Institutional, and Supervisory Defendants)***

19 141. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through
20 140 above as though set forth fully herein.

22 142. Defendants CITY, POLICE, COUNTY, COUNTY JAIL, MANHEIMER,
23 HORSLEY, CITY OF BURLINGAME, BURLINGAME POLICE DEPARTMENT, JACK VAN
24 ETTEN, and SUPERVISORY DEFENDANTS DOES 1-200, Defendants knew or reasonably
25 should have know that the Plaintiff was raped by off duty police officer Mason under California
26 Penal code section 261 and 286.

143. Defendants acted together and with Mason in concerted action and agreement to intentionally discriminate against the Plaintiff as a woman and victim of domestic violence, and conspired to deprive the Plaintiff of her right to equal protection under the laws and covered up Mason's crime of rape and the unlawful conduct of Police Officer and Deputies.

144. Defendants conspired in furtherance and intentionally failed to investigate and/or failed to adequately investigate the Plaintiffs allegations of assault, denied her of her right to medical attention, and intentionally failed to provide the Plaintiff with a drug and blood alcohol test in order to cover up evidence of Mason's crime of rape by intoxication under California law, which subject the Plaintiff to deprivation of her constitutional rights of due process, meaningful access to the courts and her right to equal protection of the laws.

145. Defendants maintained or permitted an official policy, custom, or practice subjected the PLAINTIFF or caused her to be subjected to the deprivation of constitutional rights, and directly and proximately damaged plaintiff as herin alleged, entitling plaintiff to recover damages for said constitutional violations under 42 U.S.C. § 1985 § 1985 (3).

146. WHEREFORE, plaintiff prays for relief as hereunder appears.

COUNT FOUR

42 U.S.C. § 1985 § 1985 (3)

Conspiracy to Discriminate under the First and Fourteenth Amendment (Individual Defendants)

147. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 146 above as though set forth fully herein.

148. Defendant MASON, Sgt. PERUCCI, Officer MURPHY, Officer YANSUKA, Deputy BLICK, SAN MATEO POLICE OFFICERS and DEPUTIES Does 1-100 conspired in

1 concerted action to discriminate against the plaintiff as a woman and victim of domestic violence.
2 Defendants knew or reasonably should have known that the Plaintiff was raped by off duty police
3 officer MASON under California Penal code section 261 and 286. Defendants acted in concerted
4 action and agreement with off duty police officer Mason and conspired directly and /or indirectly
5 to discriminate against the plaintiff as a woman and victim of domestic violence to cover up
6 Mason's crime of rape and their own unlawful conduct.
7

8 149. Defendants conspired in furtherance and intentionally failed to investigate and/or
9 failed to adequately investigate the Plaintiffs allegations of assault, denied her of her right to
10 medical attention, and intentionally failed to provide the Plaintiff with a drug and blood alcohol
11 test in order to cover up evidence of Mason's crime of rape by intoxication under California law.
12

13 150. Defendants MASON, KASHIWAHARA, and VEGA acted in agreement and
14 concerted actions and under the color of law to intentionally discriminated against the plaintiff as
15 a woman and as a victim of domestic violence and denied the plaintiff of her right to equal
16 protection under the laws.
17

18 151. Defendants subjected or caused the plaintiff to be subjected to the deprivation of
19 her constitutional rights of due process, meaningful access to the courts and her right to equal
20 protection of the laws, and directly and proximately damaged plaintiff as herin alleged, entitling
21 plaintiff to recover damages for said constitutional violations under 42 U.S.C. § 1985 § 1985 (3).
22

23 152. WHEREFORE, plaintiff prays for relief as hereunder appears.
24

25 / / /

26 / / /

27 / / /

COUNT FIVE

42 U.S.C. § 1983

Failure to investigate violation of the First and Fourteenth Amendment

(County, City, Institutional and Supervisory Defendants)

153. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 152 above as though set forth fully herein.

154. Defendants COUNTY, CITY, POLICE, COUNTY JAIL, SAN JOSE POLICE, CITY OF SAN JOSE, MANHEIMER, PERUCCI, O'BRIEN, RODRIGUES, HORSLEY, DAVIS, Supervisory Defendants, and DOES 1-100 recklessly and with deliberate indifference failed to investigate and/or failed to adequately investigate the Plaintiffs complaints of its POLICE Officer's, Sheriff's DEPUTIES and MASON.

155. Defendants' policies, practices, and customs of failing to investigate and/ or failing to adequately investigate and report its POLICE officers and DEPUTIES misconduct and MASON'S criminal misconduct, violated the PLAINTIFF'S constitutional rights by the First and Fourteenth Amendment's right to petition the courts, and the due process clause to due process and meaningful access to the courts.

156. Defendant COUNTY, COUNTY JAIL, and Supervisor Defendant's failure to investigate reflects a deliberate indifference to violations of the plaintiff's constitutional rights and indicates that the defendants' policies and /or customs condoned unlawful and unconstitutional conduct of its Deputies. It can be adduced that cover-ups and failure to take corrective action against errant deputies and police officers occurred with some frequency.

157. Defendant's possessed information revealing a strong likelihood of criminal and unconstitutional conduct by subordinate officers and off duty police officer MASON, but did

1 nothing to investigate the misconduct, thereby causing harm to the plaintiff. Defendant's had a
2 job to do, but did not do it.

3 158. The COUNTY, CITY and Supervisory Defendants deliberate indifference to the
4 POLICE and DEPUTIES misconduct and failure to investigate the misconduct, amounts to a
5 reckless indifference to the violations of the PLAINTIFF'S constitutional and legal rights, and
6 constitutes supervisory liability under § 1983.
7

8 159. Defendants intentional failure to investigate and/ or failure to adequately
9 investigate the Plaintiff's complaints against Mason, impeded the plaintiff's ability to bring a civil
10 and criminal action against Mason, thereby denying the plaintiff of her constitutional right to due
11 process and access to the courts.
12

13 160. Defendants intentional failure to investigate and/ or failure to adequately
14 investigate the Plaintiff's complaints against POLICE and Sheriff's DEPUTIES, impeded or
15 seriously compromised the PLAINTIFF'S ability to bring constitutional violation claims against
16 POLICE and DEPUTIES, thereby denying the PLAINTIFF of her constitutional right to due
17 process, meaningful access to the courts, and right to petition the government for redress of her
18 grievance, and directly and proximately damaged plaintiff as herin alleged, entitling plaintiff to
19 recover damages for said constitutional violations under 42 U.S.C. sec § 1985 § 1985 (3).
20

21 161. WHEREFORE, plaintiff prays for relief as hereunder appears.
22

23 / / /

24 / / /

25 / / /

26 / / /

27 / / /
28

COUNT SIX

42 U.S.C. § 1983

Failure to investigate violation of the First and Fourteenth Amendment

(Individual Defendants)

162. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 161 above as though set forth fully herein.

163. Defendant PERUCCI, MURPHY, NUE, MANHEIMER, DAVIS, BLICK, O'BRIEN, RODRIGUES, HORSLEY, Supervisory Defendants, and DOES 1-100 recklessly and with deliberate indifference failed to investigate and/or failed to adequately investigate the Plaintiffs complaints of its POLICE Officer's, Sheriff's DEPUTIES and MASON.

164. Defendant's possessed information revealing a strong likelihood of criminal and unconstitutional conduct by POLICE OFFICERS, DEPUTIES, and off duty police officer MASON, but did nothing to investigate the misconduct, thereby causing harm to the plaintiff. Defendant's had a job to do, but did not do it.

165. Defendants deliberate indifference to the POLICE and DEPUTIES misconduct and failure to investigate the misconduct, amounts to a reckless indifference to the violations of the PLAINTIFF'S constitutional and legal rights, and constitutes supervisory liability under § 1983.

166. Defendants intentional failure to investigate and/ or failure to adequately investigate the Plaintiff's complaints against Mason, impeded the plaintiff's ability to bring a civil and criminal action against Mason, thereby denying the plaintiff of her constitutional right to due process and access to the courts.

167. Defendants intentional failure to investigate and/ or failure to adequately investigate the Plaintiff's complaints against POLICE and Sheriff's DEPUTIES, impeded or

1 seriously compromised the PLAINTIFF'S ability to bring constitutional violation claims against
 2 POLICE and DEPUTIES, thereby denying the PLAINTIFF of her constitutional right to due
 3 process, meaningful access to the courts, and right to petition the government for redress of her
 4 grievance, and directly and proximately damaged plaintiff as herin alleged, entitling plaintiff to
 5 recover damages for said constitutional violations under 42 U.S.C. sec § 1985 § 1985 (3).
 6

7 168. WHEREFORE, plaintiff prays for relief as hereunder appears.
 8

9 **COUNT SEVEN**

10 **42 U.S.C. § 1983**

11 **Intentional Interference with Access to the Courts**

12 **Violation of the First and Fourteenth Amendment**

13 ***(County, City, Institutional and Supervisory Defendants)***

14
 15 169. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through
 16 168 above as though set forth fully herein.

17 170. The CITY, COUNTY, COUNTY JAIL, SAN JOSE POLICE DEPARTMENT,
 18 CITY OF SAN JOSE, SAN MATEO POLICE, MANHEIMER, DAVIS, HORSLEY, O'BRIEN,
 19 RODRIGUEZ, and defendants Does 1-100 intentionally interfered with the plaintiff's right to
 20 access the courts, a privilege and immunity of citizenship protected by Article IV of the
 21 Constitution, by the First amendment's right to petition, and by the due process clause.
 22

23 171. Defendants intentionally failed and/ or failed to adequately investigate the
 24 plaintiff's sexual assault and conspiracy allegation to deny the plaintiff her right to equal
 25 protection with the intention of interfering with the plaintiff's meaningful access to the courts.
 26
 27
 28

172. Defendants intentionally and negligently denied the plaintiff medical attention, a blood alcohol test, and a drug test and intentionally interfered with the plaintiff's right to access the courts.

173. Defendants lied in oppositions to pitches motions and subpoena duces tecum with the intention of interfering with the plaintiff's right to access the courts.

174. Defendants Policies and customs of subjected the PLAINTIFF or caused her to be subjected to the deprivation of her right to meaningful access to the courts and violated her First and Fourteenth amendment right of the constitution, and directly and proximately damaged plaintiff as herin alleged, entitling plaintiff to recover damages for said constitutional violations under 42 U.S.C. sec § 1983.

175. WHEREFORE, plaintiff prays for relief as hereunder appears.

COUNT EIGHT

42 U.S.C. § 1983

Intentional Interference with Access to the Courts

Violation of the First and Fourteenth Amendment

(Individual Defendants)

176. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 175 above as though set forth fully herein.

177. Defendants PERUCCI, MURPHY, YANSUKA, BLICK, NUE, PARISIAN, MANHIEMER, DAVIS, HORSLEY, ALBERTIE, O'BRIEN, RODRIGUEZ, SAN MATEO POLICE OFFICERS, DEPUTIES Does 1-100, and Does 1-100 and intentionally interfered with the plaintiff's right to access the courts, a privilege and immunity of citizenship protected by

1 Article IV of the Constitution, by the First amendment's right to petition, and by the due process
2 clause.

3 178. Defendants intentionally failed and/ or failed to adequately investigate the
4 plaintiff's sexual assault and conspiracy to discriminate and deny equal protection allegations
5 with the intention of interfering with the plaintiff's meaningful access to the courts.
6

7 179. Defendants intentionally and negligently denied the plaintiff medical attention, a
8 blood alcohol test, and a drug test and intentionally interfered with the plaintiff's right to access
9 the courts.

10 180. Defendants lied in oppositions to pitches motions and subpoena duces tecum with
11 the intention of interfering with the plaintiff's constitutional right to access the courts.
12

13 181. WHEREFORE, plaintiff prays for relief as hereunder appears.
14

15 **COUNT NINE**

16 **42 U.S.C. § 1983**

17 **Failure to provide Medical Assistance under the Eighth and Fourteenth Amendment** 18 ***(City, County, Institutional, and Supervisory Defendants)*** 19

20 182. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through
21 181 above as though set forth fully herein.

22 183. Defendants CITY, COUNTY, and SUPERVISORY DEFENDANTS DOES 1-100
23 knew or reasonably should have known that the Plaintiff had been raped and was in need of
24 immediate medical attention.
25

26 184. Defendants CITY, COUNTY, and SUPERVISORY DEFENDANTS DOES 1-100
27 intentionally and with reckless indifference, failed to provide the Plaintiff with the medical
28

1 attention and access to Rape Trauma Counselors as required by California state law after she had
2 been raped.

3 185. Defendants Policies and customs of subjected the PLAINTIFF or caused her to be
4 subjected to the deprivation of her Eighth amendment right to free from cruel and unusual
5 punishment and violated her Fourteenth amendment right to due process and equal protection of
6 the laws, and directly and proximately damaged plaintiff as herin alleged, entitling plaintiff to
7 recover damages for said constitutional violations under 42 U.S.C. sec § 1983.
8

9 186. WHEREFORE, plaintiff prays for relief as hereunder appears
10

11 **COUNT TEN**

12 **42 U.S.C. § 1983**

13 **Failure to provide Medical Assistance under the Eighth and Fourteenth Amendment** 14 **(Individual Defendants)** 15

16 187. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through
17 186 above as though set forth fully herein.

18 188. Defendants PERUCCI, MURPHY, YANSUKA, BLICK, and DOES 1-100 knew
19 or reasonably should have known that the Plaintiff had been raped and was in need of immediate
20 medical.
21

22 189. Defendants PERUCCI, MURPHY, YANSUKA, BLICK, and DOES 1- 100
23 intentionally and recklessly failed to provide the Plaintiff with the medical attention she required
24 of doctors and rape trauma counselors after she had been raped and locked the plaintiff up in a jail
25 cell.
26

27 190. Defendants caused the plaintiff or subjected her to the deprivation of her Eighth
28 amendment right to be free from cruel and unusual punishment and violated her Fourteenth

1 amendment right to due process and equal protection of the laws, and directly and proximately
 2 damaged plaintiff as herin alleged, entitling plaintiff to recover damages for said constitutional
 3 violations under 42 U.S.C. § 1983.

4 191. WHEREFORE, plaintiff prays for relief as hereunder appears
 5
 6

7 **COUNT ELEVEN**

8 **42 U.S.C. § 1983**

9 **Negligent Hiring, Supervision, and Failure to Train**

10 **Violation of the Fourth, Eighth, and Fourteenth Amendment**

11 ***(City, County, Institutional and Supervisory Defendants)***
 12

13 192. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through
 14 191 above as though set forth fully herein.

15 193. Defendants CITY, COUNTY, POLICE, JAIL, CITY OF SAN JOSE, SAN JOSE
 16 POLICE DEPARTYMENT, CITY OF BURLINGAME, BURLINGAMR POLICE
 17 DEPARTMENT, VAN ETEN, PERUCCI, MANHIEMER, HORSLEY, DAVIS, and
 18 SUPERVISORY DEFENDANTS DOES 1-100 negligently hired, supervised, and failed to train
 19 its Police officers and Deputies which amounted to complete indifference to the Plaintiff's
 20 constitutional rights.
 21
 22

23 194. Defendants negligently hired, supervised, and failed to train and its police officers
 24 and deputies on California state laws of rape and a victim's legal right to medical attention and a
 25 rape trauma counselor after she had been raped. Defendants failure to train is police officers and
 26 deputies amounted to a deliberate indifference to the rights of plaintiff and subjected her or
 27 caused her to be subjected to a deprivation of her constitutional rights.
 28

COUNT THIRTEEN

42 U.S.C. § 1983

**Unreasonable Search and Seizure Violation of Fourth and Fourteenth Amendment
(Individual Defendants)**

200. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 199 above as though set forth fully herein.

201. Defendants' BLICK and DEPUTIES DOES 1-100 unlawful and unreasonable strip search complained of herin violated plaintiff's rights under the Fourth Amendment to be free from unreasonable searches and seizures, violated said plaintiff's right to due process and privacy under the Fourteenth Amendment, and directly and proximately damaged plaintiff as herin alleged, entitling plaintiff to recover damages for said constitutional violations under 42 U.S.C. § 1983.

202. WHEREFORE, plaintiff prays for relief as hereunder appears.

COUNT FOURTEEN

42 U.S.C. § 1983

**California State Unruh Civil Rights Act, Civil Code sec 52 and 52.1
(City, County, Institutional and Supervisory Defendants)**

203. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 202 above as though set forth fully herein.

204. Defendants' COUNTY, SHERIFF'S OFFICE, HORSLEY and DOES 1-100 policies, practices, and customs regarding the strip search complained of herin violated plaintiff's rights to privacy as secured by Article 1, Section 1 of the California Constitution and directly and

1 proximately damaged plaintiff as herin alleged, entitling said plaintiff to recover damages
2 pursuant to California Civil Code sec 52.1 and sec 52, in addition to other damages.

3 205. WHEREFORE, plaintiff prays for relief as hereunder appears.
4

5
6 **COUNT FIFTEEN**

7 **28 U.S.C. § 1367 and 42 U.S.C. § 1983**

8 **Abuse of Process**

9 **(County)**

10 206. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through
11 205 above as though set forth fully herein.

12 207. Defendants' COUNTY, SAN MATEO COUNTY SHERIFF'S OFFICE and
13 DOES 1-100 lying and providing false information to the courts in opposition briefs to Pitchess
14 Motion and Subpoena Duces Tecum constitutes a malicious abuse of process.
15

16 208. WHEREFORE, plaintiff prays for relief as hereunder appears.
17

18 **COUNT FIFTEEN**

19 **28 U.S.C. § 1367 and 42 U.S.C. § 1983**

20 **Abuse of Process**

21 **(Individual Defendants)**

22
23 209. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through
24 208 above as though set forth fully herein.

25 210. Defendants' ALBERTIE and DOES 1-100 lying and providing false information
26 to the courts in opposition briefs to Pitchess Motion and Subpoena Duces Tecum constitutes a
27 malicious abuse of process.
28

1 211. WHEREFORE, plaintiff prays for relief as hereunder appears.
2
3
4

5 **COUNT SIXTEEN**

6 **28 U.S.C. § 1367**

7 **Negligence**

8 ***(City, County, Institutional and Supervisory Defendants)***
9

10 212. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through
11 211 above as though set forth fully herein.

12 213. Defendants CITY, COUNTY, SAN MATEO POLICE, SAN MATEO COUNTY
13 SHERIFF'S OFFICE, SAN JOSE POLICE DEPARTMENT, PERUCCI, MANHIEMER,
14 HORSLEY, DAVIS, and Does 1-100 negligent acts as described herin above has caused the
15 Plaintiff emotional distress.
16

17 214. WHEREFORE, plaintiff prays for relief as hereunder appears.
18

19 **COUNT SEVENTEEN**

20 **28 U.S.C. § 1367**

21 **Negligence**

22 ***(Individual Defendants)***
23

24 215. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through
25 214 above as though set forth fully herein.

26 216. Defendants PERUCCI, MURPHY, YANSUKA, MANHIEMER, BLICK,
27 O'BRIEN, RODRIGUEZ, ALBERTIE, HORSLEY, VAN ETEN, KASHIWAHARA, VEGA
28

1 DAVIS, SAN MATEO POLICE OFFICERS DOES 1-100, SHERIFF DEPUTIES DOES 1-100,
2 and DOES 1-200 acted recklessly, and with gross negligence, by their acts and omission of acts,
3 causing the Plaintiff emotional and physical distress

4 217. WHEREFORE, plaintiff prays for relief as hereunder appears.
5

6 **COUNT EIGHTEEN**

7 **28 U.S.C. § 1367**

8 **Negligent Infliction of Emotional Distress**
9 ***(City, County, Institutional and Supervisory Defendants)***
10

11 218. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through
12 217 above as though set forth fully herein.

13 219. Defendants CITY, COUNTY, SAN MATEO POLICE, SAN MATEO COUNTY
14 SHERIFF'S OFFICE, BURLINGAME POLICE DEPARTMENT, CITY OF BURLINGAME,
15 SAN JOSE POLICE DEPARTMENT, VAN ETEN, PERUCCI, MANHIEMER, HORSLEY,
16 DAVIS, and Does 1-100 negligent acts as described herein above has caused the Plaintiff
17 emotional distress.
18

19 220. WHEREFORE, plaintiff prays for relief as hereunder appears.
20

21 **COUNT NINETEEN**

22 **28 U.S.C. § 1367**

23 **Negligent Infliction of Emotional Distress**
24 ***(Individual Defendants)***
25

26 221. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through
27 220 above as though set forth fully herein.
28

222. Defendants PERUCCI, MURPHY, YANSUKA, PARISIAN, NUE,
 MANHIEMER, BLICK, O'BRIEN, RODRIGUES, HORSLEY, ALBERTIE, VAN ETEN,
 KASHIWAHARA, VEGA, SAN MATEO POLICE OFFICERS DOES 1-100, SHERIFF
 DEPUTIES 1-100 and Does 1-100 negligent acts as described herin above has caused the
 Plaintiff emotional distress.

223. WHEREFORE, plaintiff prays for relief as hereunder appears.

COUNT TWENTY

28 U.S.C. § 1367

Intentional Infliction of Emotional Distress (City, County, Institutional and Supervisory Defendants)

224. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through
 223 above as though set forth fully herein.

225. Defendants CITY, COUNTY, SAN MATEO POLICE, SAN MATEO COUNTY
 SHERIFF'S OFFICE, BURLINGAME POLICE DEPARTMENT, CITY OF BURLINGAME,
 SAN JOSE POLICE DEPARTMENT, VAN ETEN, PERUCCI, MANHIEMER, HORSLEY,
 DAVIS, and Does 1-100 intentional acts as described herin above has caused the Plaintiff
 emotional distress.

226. WHEREFORE, plaintiff prays for relief as hereunder appears.

/ / /

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/ / /

/ / /

COUNT TWENTY ONE

28 U.S.C. § 1367

**Intentional Infliction of Emotional Distress
(Individual Defendants)**

227. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 226 above as though set forth fully herein.

228. Defendants PERUCCI, MURPHY, YANSUKA, PARISIAN, NUE, MANHIEMER, BLICK, O'BRIEN, RODRIGUES, HORSLEY, ALBERTIE, VAN ETTEN, KASHIWAHARA, VEGA, SAN MATEO POLICE OFFICERS DOES 1-100, SHERIFF DEPUTIES 1-100 and Does 1-100 intentional acts as described herin above has caused the Plaintiff emotional distress.

229. WHEREFORE, plaintiff prays for relief as hereunder appears.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against defendants, and each of them, for each cause of action above alleged, as follows:

1. General damages;
2. Special damages;
3. Punitive damages;
4. Attorneys' fees and costs incurred in connection with this action to the fullest extent permitted by law;
5. Such other relief as may be just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38 and Civil Local Rule 3-6, plaintiff hereby demands a jury trial on all issues so triable.

Dated: May 1, 2008

Respectfully submitted,


By: Jane Doe, plaintiff in pro se